UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,889	10/28/2003	Gautam Ghose	00121-000700000	7789

7590 12/04/2006		EXAMINER
Law Office Of Leland Wiesner		CHU, GABRIEL L
1144 Fife Ave.		
Palo Alto, CA 94301		

ART UNIT	PAPER NUMBER
2114	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>15 October 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-35</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-4,6-16,18-21,23-31 and 33-35</u> is/are rejected.

7)☒ Claim(s) <u>5,17,22 and 32</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>28 October 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

2.   **Claims 30, 31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** Referring to claims 30, 31, it appears Applicant has misidentified the dependencies and further failed to amend the claims as indicated in their remarks (page 11). For the purpose of examination, claims 30 and 31 are understood to depend from claim 29.

Claim Rejections - 35 USC § 101

3.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4.   **Claims 33, 34 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.** Referring to claims 33, 34, Applicants have claimed the invention using 112 6th means plus function language, thereby referring to specific portions of the specification as limiting embodiments of the invention. For example, from paragraph 51 of Applicant's specification in the pre-grant publication, such means may be construed as disembodied software. In order to overcome this rejection, Applicant must amend so as to specify that such means are tangibly embodied on a storage medium executable by a processor.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. **Claims 1-4, 6-11, 18-21, 23-26, 33 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5666481 to Lewis in view of US 20020019922 to Reuter et al.** See previous office action.

7. **Claims 12-16, 27-31, 34 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5666481 to Lewis in view of US 20020019922 to Reuter et al. and US 6336139 to Feridun et al.** See previous office action.

8. **Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5666481 to Lewis in view of US 20020019922 to Reuter, "threshold" by IEEE, and "graphical user interface" by Microsoft Computer Dictionary (herein MSCD).** See previous office action.

Allowable Subject Matter

9. Claims 5, 17, 22, 32 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10.   Applicant's arguments filed 15 October 2006 have been fully considered but they are not persuasive. Regarding Applicant's assertion (page 11) that claim 30 and 31 have been amended to correct for dependency issues, this has not actually been done.

11.   Regarding Applicant's argument (page 11) that claims 33 and 34 are apparatuses and are therefore machines, as indicated previously, Applicant has indicated such means can also be disembodied software. If Applicant intends these means to be limited to machines, Applicant is advised to amend the claims to indicate this.

12.   Regarding Applicant's argument (page 13) that Lewis does not mention storage area networks, this is why it is a 103 rejection involving Reuter.

13.   Regarding Applicant's argument (page 14) that Lewis does not record or use the "underlying errors", it should be noted and stressed that Applicant should look at what is actually claimed, i.e., "error events". There is nothing in the claims that indicates that error events correspond to "underlying errors". Indeed, reading the claims, it is difficult to imagine how an **underlying** error is even arrived at using Applicant's system. As interpreted, an error event is merely an event associated with an error. These may very well be the symptoms of Lewis. There is simply nothing in the claims that precludes this interpretation.

More commonly, underlying errors are discovered by root cause analysis, also a common concept of the art. From the structures and processes described, Examiner does not believe that there is any root cause analysis type activity claimed.

14.   Regarding Applicant's argument (page 15) that Lewis does not disclose an "error pattern" of error events, Applicant then admits that Lewis has a set of symptoms. Examiner believes that Applicant is relying on the "underlying error" argument above.

15.   Regarding Applicant's argument (page 15) that Lewis applies to communications networks and not to SANs and Applicant's assertion that Examiner has asserted these are "equivalent", Examiner has nowhere asserted such a thing. However, Applicant appears to fail to recognize the breadth of the term "communication network", which is any network used for communication. Surely, Applicant is not suggesting that a SAN is not a network that communicates. Further, looking at at least claim 1, Examiner finds the inventive concept described in the claims are unparticular to a SAN type environment. In view of the generality of Lewis and the vagueness of Applicant's claims, Examiner finds such an argument against the combination of Lewis and Reuter to be wholly unpersuasive. From Examiner's point of view, it appears as if Applicant has merely taken a long prior concept of the art and decided to use it with SANs. There does not appear to be any integration with the SAN concept whatsoever.

Further, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

16.   Regarding Applicant's argument (page 16) that "Examiner inappropriately equated" handling faults with handling errors, while it is true that faults may differ from errors, the goal of either handling is to resolve the fault/error. The combination of Lewis and Reuter is not to show that a fault can be handled by Lewis's system, or that an error can be handled by Reuter's system, but that such error handling would be applicable to any such network system, and that further, Lewis and Reuter are, generally, structurally compatible as both disclose central handling. Further, Applicant's position that Reuter does not handle errors only further intensifies the need for such an error handling system. Surely, Applicant is not suggesting that it would be better to have **less** system availability and **more** unresolved issues.

Regardless, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

17.   Regarding Applicant's argument (page 17) that Lewis applies to networks from LANs to WANs, but not to SANs, had Lewis explicitly stated such an application, the rejection would have been applied under 102, not 103. Furthermore, Applicant has grossly mischaracterized Lewis by interjecting "from LANs to WANs but not to SANs". Lewis nowhere specifically predicts future technology (and terminology) and then explicitly strikes it from consideration, as Applicant asserts. Further still, Applicant

provides a false "range" in describing LANs and WANs but provides no proof of such a range, and no proof that a SAN may fall within or without such a range.

18.   Regarding Applicant's argument (page 17) that Feridun uses a distributed arrangement and that Lewis uses a centralized one, firstly, Applicant has apparently ignored the fact that there is still a management server for the managed, distributed machines (see abstract).

Secondly, the Feridun reference was applied in combination for the sole purpose of providing evidence that temporal analysis is well known in the art. The time-wise analysis of data is not only a well known concept for error handling, but any data analysis art, not limited to computing. Lewis has already disclosed set analysis (comparison) in the determination of resolutions.

Thirdly, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

19.   Regarding Applicant's argument (page 18) that Feridun does not compare a temporal arrangement of the error events, Applicants cite one part of the portion Examiner cited. Applicant will note that the other portions cited speak quite specifically about "change" and "sequence". Clearly, this addresses the "temporal arrangement of error events" that Applicant asserts is not present.

Conclusion

20.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-

3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gabriel L. Chu
Examiner
Art Unit 2114

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